



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 10, 2006

Mr. Jorge Villegas  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza, 9th Floor  
El Paso, Texas 79901-1196

OR2006-03555

Dear Mr. Villegas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 245818.

The City of El Paso (the "city") received a request for information pertaining to a specified bid. You state that you have released some of the requested information, but that a portion of the remaining requested information may be excepted from disclosure under section 552.101 of the Government Code. You also state that releasing the submitted information may implicate the proprietary interests of Integrity Employee Assistance ("Integrity"). You inform us that you have notified this interested third party of the city's receipt of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>This letter ruling assumes that the submitted "representative sample" of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the city to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Integrity has not submitted to this office reasons explaining why the city should not release its information. Therefore, Integrity has provided us with no basis to conclude that it has a protected proprietary interest in any of the information at issue, and none of it may be withheld on that basis. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Next, we note that the submitted information contains a password. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in that decision and our review of the submitted information, we determine that the password we have marked does not constitute public information under section 552.002 of the Government Code. Accordingly, such information is not subject to the Act and need not be released.

The city claims that a portion of the information at issue, which you have marked, is excepted from disclosure under section 552.101. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception protects information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). The city has not asserted any law, and this office is unaware of any law, under which any of the information at issue is considered to be confidential for purposes of section 552.101. Therefore, the city may not withhold any of the information it has marked under section 552.101.

We note that the submitted information contains insurance policy numbers that are subject to section 552.136 of the Government Code. Section 552.136 in relevant part:

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The city must withhold the insurance policy numbers that we have marked in the submitted information pursuant to section 552.136 of the Government Code.

Finally, we note that the submitted information contains a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the city must withhold the social security number contained in the submitted information under section 552.147.<sup>2</sup>

In summary, the password we have marked is not subject to the Act and need not be released. The city must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code and the social security number under section 552.147 of the Government Code. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 245818

Enc. Submitted documents

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